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Oral Hearing:
April 4, 2002
GDH/gdh

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Archambeau

Serial No. 75/318,325

Richard G. Martin and Donald R. Fraser of MacMillan, Sobanski & Todd, LLC for Lurley J. Archambeau.

Rebecca L. Gilbert, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Hohein, Wendel and Holtzman, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Lurley J. Archambeau has filed an application to register the mark "HEALTHEMES" for services identified by amendment as "providing health care information."¹

¹ Ser. No. 75/318,325, which was filed on July 2, 1997, on the basis of an allegation of a bona fide intention to use such mark in commerce. As filed, applicant's services were identified as "healthcare services, namely, creation, development, acquisition, accumulation, coordination, structuring and distribution of information involving health issues." A statement of use, alleging a date of first use

Registration has been finally refused on the ground that the specimen of use is unacceptable because it fails to show the mark "HEALTHEMES" used or displayed in the sale or advertising of the services recited in the application as amended. Sections 1(a)(1), 3 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1053 and 1127; Trademark Rules 2.56(a) and 2.88(b)(2); and TMEP Section 1301.04. Specifically, the Examining Attorney maintains that "the specimen appears to be a questionnaire which is ancillary to providing health care services" and that applicant, therefore, must submit a substitute specimen verified as to the use thereof in commerce in connection with the services of providing health care information prior to the expiration of the time allowed to applicant for filing the statement of use.

Applicant has appealed. Briefs have been filed and an oral hearing was held. We affirm the refusal to register.

Applicant contends that the specimen of use filed with the statement of use, consisting of an eight-page questionnaire entitled "HEALTHEMESTM CONFIDENTIAL BIOGRAPHY©" and an associated two-page follow-up captioned "HEALTHEMESTM Status Update©," shows use of the service mark "HEALTHEMES" in connection with providing health care information, as recited in the

anywhere of April 1, 2000 and a date of first use in commerce of April 7, 2000, subsequently was filed on May 12, 2000.

application. In particular, applicant states that he is a psychiatrist who uses the questionnaire and its follow-up in the course of his medical practice.

Applicant argues in this regard that, "[s]imply stated, the applicant sells health care information," which "is imparted by the applicant to his patients almost entirely by way of the spoken word." Applicant notes, however, that in conjunction therewith, he utilizes the specimen "questionnaire as a tool to determine which health care information to provide and the most appropriate means to do so," while using "the status update to determine which additional health care information to provide." According to applicant, the specimen demonstrates use of the mark "HEALTHEMES" for the services of providing health care information because:

[T]he questionnaire bears the mark and is used in connection with providing health care information. The questionnaire [itself] also provides health care information.

The very process of completing the questionnaire is, in itself, a technique used to provide health care information. The questionnaire educates patients about mental health problems and solutions. By considering the questions and preparing answers, the patient is required to think about his or her own mental health care and resolution of particular problems.

The applicant's psychiatric counseling clearly involves the imparting of mental health care information and is accomplished through use of evaluation questionnaires in conjunction with the spoken word. When the patients see the mark HEALTHEMES on the documents ..., they understand the mark to be a source identifier. The mark identifies the applicant as the source of the health care services and information provided by the applicant and the questionnaire.

The questionnaire is used by the applicant during subsequent counseling sessions in which the applicant provides health care information. He holds it in his hand and reviews it with the patient when he counsels the patient, for example, providing him or her with information about mental health.

We are constrained to agree with the Examining Attorney that, while the specimen of use would appear to show use of the mark "HEALTHEMES" for psychiatric evaluation and counseling services or providing psychiatric care, it does not evidence use of the mark in connection with the services of "providing health care information" as such. Applicant clearly is not providing, for example, a medical or generalized health care reference source from which information on diseases and/or treatments could be obtained, much like a medical library facility. Rather, applicant's services as rendered under his mark are focused on specific patients and their psychiatric needs, as assessed by applicant through the use in part of a questionnaire and a follow-up survey. As accurately pointed out

by the Examining Attorney in her brief (underlining in original):

The Applicant's questionnaires do not provide any health care information. The Applicant's questionnaires are merely ancillary forms used in connection with providing [psychiatric] health care services. The questionnaires request information from the patient. The questionnaires do not provide the patient with any information.

Furthermore, with respect to applicant's contention that he imparts health care information to a patient because the patient is forced to consider and provide answers to the questions on the questionnaire, we concur with the Examining Attorney that the fact that the patient must think of answers "in no way shows that the applicant ... provides information to the patient." In particular, applicant's argument that the definition of "psychiatric symptom" which appears on his questionnaire itself functions as a health care information service is not well taken. As persuasively noted by the Examining Attorney, "[a] definition listed in a questionnaire in order to help a patient fill out the questionnaire cannot be equated to a health care information service."

While it is unfortunate that the various activities which, by amendment of the application, applicant grouped under the rubric of "providing health care information" do not equate to the services, as demonstrated by the specimen of use, of

providing psychiatric health care, the difference is not merely a matter of semantics. In order to be registrable, in the absence of an acceptable, properly verified substitute specimen, the specimen which is of record must show use or display of the mark "HEALTHEMES" in connection with the sale or advertising of the services--as set forth in the application--of "providing health care information" and it does not. Applicant's questionnaire and its follow-up sheet are merely ancillary forms utilized in his psychiatric health care practice; they do not provide a patient with any health care information; and they consequently are not acceptable as a specimen of use of the mark "HEALTHEMES" in connection with the services of "providing health care information."

Decision: The refusal to register is affirmed.